IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1285 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

@

FAROD VIBHAG KELAVNI MANDAL

Versus

DISTRICT EDUCATION OFFICER

Appearance:

1. Special Civil Application No. 1285 of 2002

MR MP PRAJAPATI for Petitioner No. 1

MR ND GOHIL, ASST. GOVERNMENT PLEADER for Respondent No. 1-2

CORAM : MR.JUSTICE A.R.DAVE

Date of decision: 18/04/2002

ORAL JUDGEMENT

Rule. Service of rule is waived by learned AGP Shri N.D. Gohil for the respondents.

2. The petitioner is an educational institute, which

has filed this petition with a prayer that Shri Kamnath High School, which is being managed by the petitioner trust, be permitted to fill up the vacancy in the cadre of a teacher, who can teach Science and Maths.

3. Learned advocate Shri Prajapati appearing for the petitioner trust has submitted that a vacancy had been created in the cadre of teacher due to resignation given by Shri B.R. Shah, who was working as a teacher teaching Science and Maths.

4. As there was a vacancy, the petitioner trust had made a request to the respondent authorities to grant No Objection Certificate to the petitioner trust so that another teacher, who can teach Science and Maths, can be appointed. The said application was granted, but it was cancelled by respondent No. 1 by an order dated 13.7.2000 as there was a ban on account of economy drive adopted by the respondent authorities and no appointment to the post of the teacher could be made. It has been submitted by the learned advocate appearing for the petitioner that at present there is no ban and therefore it is open to the petitioner to appoint one teacher, to teach Science and Maths, in accordance with law.

5. It has been submitted by the learned advocate that several applications have been given to the respondent authorities for giving necessary NOC, but the petitioner trust is not permitted to appoint a teacher, who can teach Science and Maths and, therefore, the petitioner has been constrained to approach this court with a prayer that the respondents be directed to give necessary NOC so that a teacher, who can teach Science and Maths, can be appointed.

6. In pursuance of notice issued by this court, learned AGP Shri Gohil has appeared and has submitted that it is not possible to give NOC to the petitioner trust for the reason that one of the trustees, named, Shri S.P. Patel, who was the President of the petitioner trust, had objected to grant of NOC. In pursuance of the said objection, it was not possible for the respondent authorities to give necessary NOC to the petitioner.

7. In reply to the above submission made by learned AGP Gohil appearing for the respondents, it has been submitted by learned advocate Shri Prajapati that Shri S.P. Patel is no more president of the petitioner trust as his tenure had come to an end on 12.2.2001. It has been however submitted that because of an internal rivalry among the trustees, president Shri S.P. Patel

had raised an objection though at present he is not the president of the petitioner trust. He has relied upon a change report submitted by the trust to the Jt. Charity Commissioner, Godhra to substantiate his submission.

8. Upon hearing the learned advocates, it is clear that only on account of some internal dispute going on among the trustees, NOC is not being given to the petitioner trust though it is not in dispute that there is a vacancy in the cadre of teacher and a teacher is required to be appointed.

9. In my opinion, such an objection is irrelevant because what is required to be seen by the respondent authorities is whether there is a vacancy for a teacher who can teach Science and Maths. If the respondent authorities are satisfied that in fact there is a vacancy, in my opinion, if there is no other objection, the respondent authorities should grant necessary NOC to the petitioner trust. In the circumstances, without considering the objection raised by Shri S.P. Patel, it is hoped that the application for NOC shall be considered by respondent No. 1 at an early date. It has been submitted by learned advocate Shri Prajapati that though applications have been given by the petitioner trust praying for NOC from respondent No. 1, one more application for NOC shall be given by the petitioner trust on or before 30.4.2002.

10. As and when such an application for NOC for appointment of a teacher is received by respondent No. 1, respondent No. 1 shall look into it objectively and without taking into account the objection raised by Shri S.P. Patel, the said application shall be decided as expeditiously as possible. I am sure that respondent No. 1 shall consider the fact that at present the petitioner institute is not having a teacher who can teach Science and Maths. If the said fact is correct, I am sure that respondent No. 1 shall take appropriate decision on the application as soon as possible and preferably within a period of six weeks from the date of receipt of the application.

11. In view of the above direction, the petition stands disposed of as allowed. Rule is made absolute with no order as to costs.

Direct service is permitted.

(A.R. Dave, J.)

(hn)